

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201142893
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: August 10, 2011
Wayne County DHS (31)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on August 10, 2011. The claimant appeared and testified. [REDACTED], Jet Manager, appeared on behalf of the Department.

ISSUE

Whether the Department properly sanctioned and closed the Claimant's Cash Assistance (FIP) for non compliance with Work First program requirements.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant was deferred from attending the Work First program based upon a 2/28/11 Medical Needs form completed by her doctor. Exhibit 1.
2. The Claimant was deferred for 90 days, beginning February 28, 2011.
3. The 2/28/11 deferral indicated that the Claimant could work part time with little physical requirement. Exhibit 1.
4. On 3/3/11 the Claimant's treating doctor completed another Medical Needs form indicating that the Claimant could not work, duration life time. The diagnosis was Multiple Sclerosis, urinary and stool incontinence, pancreatitis leg numbness and gait dysfunction. Exhibit 2.

201142893/LMF

5. The Claimant faxed the 3/3/11 Medical Needs form to her Jet Work First worker, [REDACTED], because she could not climb the stairs to deliver the information. The Claimant confirmed directly with [REDACTED] that he received the 3/3/11 fax and new Medical Needs form.
6. On May 18, 2011, the Claimant had another evaluation which indicated that she could not work and that her condition would continue for a lifetime.
7. A Notice of Non Compliance was sent to the Claimant and a triage was scheduled for June 8, 2011. Exhibit 6.
8. The Claimant called her Jet worker when she received the Notice of Non Compliance, and was not asked to provide additional medical updates.
9. The Claimant did not attend the triage as she had broken her foot, and due to her multiple sclerosis. She spoke the next day with her Jet worker who said there was nothing he could do.
10. The Department and the Work First program did not conduct the triage because the Claimant was no call/ no show. Exhibit 5.
11. The Department issued a notice of case action on June 10, 2011, which closed and sanctioned the Claimant's FIP cash assistance case and reduced her food assistance for 3 months due to non compliance with work related activities. . Exhibit 3.
12. The Claimant requested a hearing on June 20, 2011 protesting the closure of her FIP case and reduction of her food benefits.

CONCLUSIONS OF LAW

The Family Independence Program ("FIP") was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services ("DHS" or "Department"), formerly known as the Family Independence Agency, administers the FIP program pursuant to MCL 400.10, *et seq* and Michigan Administrative Code Rules 400.3101-3131. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A All Work Eligible Individuals ("WEI") are required to participate in the development of a Family Self-Sufficiency Plan ("FSSP") unless good cause exists. BEM 228. As a condition of eligibility, all WEIs

must engage in employment and/or self-sufficiency related activities. BEM 233A. The WEI is considered non-compliant for failing or refusing to appear and participate with the Jobs, Education, and Training Program ("JET") or other employment service provider. BEM 233A Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. BEM 233A. Failure to comply without good cause results in FIP closure. BEM 233A the first and second occurrences of non-compliance results in a 3 month FIP closure. BEM 233A. The third occurrence results in a 12 month sanction.

JET participants will not be terminated from a JET program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. In processing a FIP closure, the Department is required to send the client a notice of non-compliance, DHS-2444, which must include the date(s) of the non-compliance; the reason the client was determined to be non-compliant; and the penalty duration. BEM 233A. In addition, a triage must be held within the negative action period. BEM 233A A good cause determination is made during the triage and prior to the negative action effective date. BEM 233A.

In this case the Department took action without considering the March 3, 2011 Medical Needs form, which the Claimant provided to the Work First contractor, indicating the Claimant could not work due to her medical condition. At this point the Department should have submitted the form to the MRT as required by policy for deferrals from the Work First program. The Claimant testified credibly that she provided, by fax, the March 3, 2011 Medical Needs form to the Jet worker she was assigned to and confirmed by telephone that he received it. At this point she did not attend Work First as she was deferred. Under these circumstances no triage was necessary. The action which should have been taken is to request further medical in support of a continuing deferral by way of a medical needs form. Based on these facts, the Department's sanction and closure and reduction of the Claimant's FAP benefits was in error and must be reversed.

Additionally, it is found that the Department did not conduct the triage as required by policy, even though the Claimant did not appear. Department policy requires the following:

JET participants cannot be terminated from a JET program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good cause. If a client calls to reschedule, a phone triage should be attempted to be held immediately, if at all possible. At these triage meetings, good cause is determined based on the best information available during the triage and prior

to the negative action date. **Good cause must be considered, even if the client does not attend.** BEM 233A.

The fact is that BEM 233A requires the Department to hold a triage and make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made or that an actual triage was held. This practice does not follow Department policy, and is another reason supporting reversal.

Based on the forgoing, it is determined that the Department erred in failing to consider the Claimant's second Medical Needs form and should not have held a triage, and in addition the triage it held was not in compliance with Department Policy. Therefore, its determination to impose a 3 month sanction and close the Claimant's FIP case and reduce the Claimant's FAP benefits was in error, and is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the imposition of a three month sanction closing the Claimant's FIP case and reducing the Claimant's FAP case for failure to attend a triage and provide information supporting a continued deferral from Work First is REVERSED.

Accordingly it is ORDERED:

1. The Department shall reinstate the Claimant's FIP case and issue a supplement retroactive to the date of closure for FIP benefits the Claimant was otherwise entitled to receive.
2. The Department shall reinstate the Claimant to her FAP group and issue a supplement for any FAP benefits the Claimant was otherwise entitled to receive.
3. The Department shall remove from its records and Bridges system, the 3 month sanction imposed as a result of a triage held June 8, 2011.
4. The Department shall process a deferral for review by the MRT in accordance with Department policy to determine whether the Claimant is disabled based upon the

201142893/LMF

March 3, 2011 and May 16, 2011 Medical Needs forms that were provided at the hearing.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 17, 2011

Date Mailed: August 17, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LMF/hw

cc:

